IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

DATE OF DECISION: 28.11.2007

Jasbir Kaur **...Petitioner**

VERSUS

State of Punjab and others **…Respondents**

CORAM

HON'BLE MR.JUSTICE PERMOD KOHLI

PRESENT: Mr.Gopal Mahajan, Advocate for the petitioner

Ms. Monica Chhibber Sharma, AAG, Punjab
for respondent no.1

Mr.Kunal Rawal, Advocate
for respondents no.2 and 3.

Permod Kohli, J. (Oral)

Legality and validity of the order dated 27.4.2006 (Annexure P-17/T) passed by respondent no.2 is in question in the present writ petition. Vide the aforesaid impugned order, petitioner has been terminated from service from the date of her suspension, on the basis of Resolution No.433 dated 25.4.2006. It may be useful to notice the factual background of the case.

Petitioner came to be appointed as a teacher by respondent no.2, on ad hoc/temporary basis on 9.9.1968. Subsequently, vide Resolution No.41 dated 5.2.1979, she was confirmed in the service w.e.f. 9.9.1978 vide order dated 26.2.1979/1.3.1979 (Annexure P1/T). While serving as a Social Studies Mistress in Guru Nanak Girls Senior Secondary School, Amritsar, she was appointed as

Principal in the said School w.e.f. 11.7.1991 vide order dated 26.7.1991 issued by respondent no.2. While she was performing her duties as a Principal, she was served with a communication dated 29.6.2001 (Annexure P-3/T) asking her to lodge an FIR against the concerned Bank on account of certain illegal withdrawal from the Students' Funds of the School w.e.f. 12.2.1999. It is also mentioned in this letter that on the basis of enquiry report, an amount of Rs.2,46,759/- has been illegally withdrawn. She was also informed that failure to lodge FIR will attract action against her. It is alleged that petitioner complied with the aforesaid communication and lodged an FIR with the police which came to be registered as FIR No.118 dated 2.8.2001 under Sections 420/467/468/471 IPC with the Police Station Kotwali, Amritsar. Petitioner was informed by the Senior Superintendent of Police vide letter dated 10.9.2001 (Annexure P-4/T) that FIR has been lodged. Vide subsequent communication dated 12.9.2001 (Annexure P-5/T) of the Shiromani Gurdwara Parbandhak Committee, Amritsar, a charge-sheet was served upon the petitioner asking her to submit reply to the charges within 15 days. It may be relevant to mention that in this communication, she was also informed that she has already been placed under suspension vide order no.1313 dated 23.8.2001. From the copy of charge-sheet accompanied with the aforesaid communication, it appears that number of allegations were made against the petitioner. Vide Order No.1638 dated 28.9.2001 (Annexure P-6/T), petitioner was ordered to be retired from service on attaining age of 58 years w.e.f. 30.9.2001 after being reinstated

provisionally and pending the enquiry into the charges against her. Since the retiral benefits of the petitioner were withheld, she approached this Court through the medium of CWP No.17438 of 2004 seeking a direction for payment of the retiral benefits. However, the said petition came to be disposed of by this Court vide order dated 8.11.2004 whereby respondent no.2 was directed to decide the legal notice of the petitioner. The order dated 8.11.2004 passed by a Division Bench of this Court in CWP No.17438 of 2004 is noticed as under:-

> "After hearing the learned counsel for the petitioner and after perusing the record, we dispose of this writ petition with the direction to respondent no.2 to decide the legal notice Annexure P-11 of the petitioner in the light of relevant law, rules and instructions by passing a speaking order within three months of the receipt of a copy of this order."

The claim of the petitioner for payment of retiral benefits came to be rejected by respondent no.2 vide communication no.26474 dated 4.3.2005 (Annexure P-11/T). It was also communicated that speaking order dated 18.2.2005 was earlier passed which, though, sent to her, has been returned back by the Postal Department. Copy of the order dated 18.5.2005 was also annexed with this communication. Petitioner again approached this Court by filing CWP No.5928 of 2005 again claiming retiral benefits. This writ petition again came to be disposed of by order

dated 11.4.2005 which is noticed as under:-

> "We find that no relief can be given at this stage as an enquiry with regard to the embezzlement of funds allegedly made by the petitioner is in progress. Mr. Mahajan, however, points out that the enquiry proceedings have been going on against the petitioner for the last more than four years and respondents are not completing the same deliberately.
>
> We accordingly direct the respondents to complete the proceedings within four months from date a certified copy of this order is received by them on the clear understanding that the petitioner will cooperate with the enquiry proceedings.
>
> Disposed of accordingly.
>
> Dasti.
>
> Sd/-H.S.Bedi,Judge
> Sd/-Viney Mittal, Judge"

In the meanwhile, the enquiry against the petitioner in respect to the charges served upon her, came to be completed. Petitioner asked for enquiry report through her counsel vide letter dated 9.9.2005 and letter dated 23.9.2005. It is alleged that even then the enquiry report was not furnished to the petitioner and she was constrained to serve legal notice dated 9.10.2005, copy thereof is placed on record as Annexure P-16. It is alleged that without serving

the copy of the Enquiry Report to the petitioner, respondents have passed the impugned order (Annexure P-17/T).

Legality and validity of this order has been challenged primarily on four counts; (1) that the impugned order of termination has been passed without serving the copy of the charge-sheet; (2) that the petitioner was exonerated by the Enquiry Officer and the Disciplinary Authority rejected the report of the Enquiry Committee and imposed the punishment without recording any reason whatsoever for disagreement with the Enquiry Committee; (3) that the petitioner's service has been terminated retrospectively and (4) that no approval of the dismissal order from the Director Public Instructions (Secondary Education) was sought or obtained before passing the impugned order.

I have heard the learned counsel for the parties and perused the paper-book. Services of the petitioner are governed and regulated by the Statutory Rules, namely, Punjab Privately Managed Schools (Security of Service) Rule, 1981 framed under Section 15 of the Punjab Privately Managed Schools (Security of Service) Act, 1979. It is also admitted position that the school where the petitioner was employed and which is run by respondent no.2, is a Government aided school. Hence these Rules are applicable and regulate the conditions of service of the petitioner.

It may be relevant to notice Rule 18 of the afore-mentioned Rules which prescribes the procedure for taking action on the enquiry report:-

"18.<u>Action on Inquiry Report:</u> (1) The Punishing

authority shall, if it disagree with the findings of the inquiring authority on any article of charge, record its reasons for each disagreement and record its own findings on such article of charge, if the evidence on record is sufficient for the purpose.

(2)If the punishing authority, having regard to the evidence on all or any of the articles of charges, is of opinion that any of the penalities specified in rule 16 should be imposed on the employee, it shall--

(a)furnish to the employee a copy of the report of the inquiry held against him and its findings on each article of charge or where the enquiry has been held by an inquiring authority appointed by it a copy of the report of such authority and a statement of its findings on each article of charge together with brief reason for its disagreement, if any, with the findings of the inquiring authority;

(b)give the employee a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice of within such further period not exceeding fifteen days, as may be allowed, such representation as he may wish to make on the proposed panelty;

> Provided that such representation shall be based on the evidence adduced during the inquiry.
>
> (3)The punishing authority shall after considering the representation, if any, made by the employee, determine what penalty, if any, should be imposed on the employee and make such order as it may deem fit;
>
> Provided that no order of dismissal, removal, reduction in rank or within a time scale or termination shall be passed without the prior approval of the Director;
>
> (4)The Director shall not accord or refuse approval under sub-section (i) of Section 4 of the Act, unless an opportunity of being heard has been afforded to the official concerned or the managing committee as the case may be."

Sub Rule (1) of Rule 18 clearly prescribes that where the punishing authority disagrees with the findings of the enquiry authority on any Article of charge, it has to record its reason for each disagreement and record its own findings on such article of charge, on the basis of the evidence, if the evidence is sufficient. From the impugned order, it appears that the report of the enquiry authority was rejected by the Disciplinary Authority/Punishing Authority vide an earlier Resolution No.833 dated 7.9.2005. Copy of the said resolution has been placed on record as Annexure P-13/T.

I have perused this resolution. The Disciplinary Authority has simply rejected the enquiry report dated 3.9.2005 of the Sub Committee allegedly on reconsideration. Neither any reason for disagreement with the enquiry report has been recorded nor any finding based upon evidence is revealed from this order. Except this, there is no other order placed on record where from it can be ascertained that the disciplinary authority has, at any stage, after the enquiry recorded its disagreement on each Article of Charge or its own findings regarding punishment based upon evidence. This is clear violation of Rule 18 (1). Under Rule 18(2), where the punishing/disciplinary authority imposes any penalty, then it is incumbent upon such authority to furnish to the employee a copy of the report of the enquiry. Even this provision has not been complied with. Rule 18(2) (b) further requires that the employee should be served with a notice of the proposed penalty and be provided an opportunity to represent. Even this notice has not been served. Proviso to rule 18 (3) further requires the approval of the dismissal order by the Director Public Instructions which was never sought or obtained before passing the impugned order. There has been gross violation of the statutory rules and this alone renders the impugned punishment as illegal, invalid and non-est in the eyes of law.

Apart from above, infraction of the statutory rules, the impugned punishment is also liable to be set aside as the punishment of dismissal has been imposed retrospectively. While passing the impugned order dated 27.4.2006, petitioner has been ordered to be dismissed from service with effect from the date of

suspension. Petitioner was suspended on 23.8.2001. Though she retired on attaining the age of superannuation w.e.f. 30.9.2001, this question is no more resintegra having been decided by Division Bench of this Court in the case of **Municipal Committee, Dina Nagar vs. The Commissioner, Jullundur Division and others, 1977 SLWR (Pb. & Hy.) 313** with following observations:-

> "4.It was contended by Shri Sri Chand Goyal, learned counsel for the appellant, that the enquiry could be held even after respondent no.2 had attained the age of superannuation, as he had agreed in this Court in the earlier petition that the enquiry could be made against him. We are afraid, we are unable to agree with this contention of the learned counsel. There can be no gainsaying that after respondent no.2 had retired no enquiry could legally be held against him. Merely this fact that some statement had been made by respondent no.2 as was contended by Mr.Goyal would be no ground to hold that the enquiry that was held after the retirement of the respondent would be legal. Moreover, the impugned order was passed on December 8, 1970, dismissing respondent no.2 with effect from April 15, 1965, which on the face of it, is contrary to law and as held by the learned Single Judge, could not legally be sustained. Thus

viewed from any angle, we find that the order of dismissal passed by the appellant was bad in law and could not legally be sustained."

In view of the above, the impugned order dated 27.4.2006 (Annexure P-17/T) passed by respondent no.2 is hereby quashed. As a consequence of quashing of the impugned order, petitioner shall be deemed to be in service and will be entitled to all consequential benefits, including the retiral benefits alongwith interest at the rate of 6% per annum from one month after the date of retirement till the date of payment. Vide interlocutory order dated 23.5.2007, a direction was issued for the release of the retiral benefits in favour of the petitioner. It has been stated at the Bar by learned counsel for respondents no.2 and 3 that some of the retiral benefits already stands paid. Petitioner shall be entitled to interest upto the date of payment as directed above for the amount paid so far and for rest of the amount/claims, interest will be chargeable/payable till the amount is actually paid.

(PERMOD KOHLI)
JUDGE

28.11.2007
MFK

NOTE:Whether to be referred to Reporter or not:YES